Supreme Court U.S.
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No. 01-1595

In The

Supreme Court of the United States

Tammy McGovern,
Petitioner
v.
Monti and Ann McGovern,
Respondent

Reply to Brief in Opposition
For Writ Of Certiorari
To The Arizona Supreme Court

REPLY TO BRIEF IN OPPOSITION

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Questions

The following two questions are the result of a grandparent visitation litigation where the trial court declared that it had violated due process in applying Arizona law to the parent. The court then vacated it's previous orders granting visitation and returned parental control to the fit parent. Subsequently the Arizona Appeals Court, Division Two upheld the court's finding that the parent had been denied due process but remanded the case for a new trial.

1. When a case, involving a fit parent, is remanded for a new trial due to previous failure of the trial court to provide the parent due process does the new trial become such a burden on the parent, family, and parental rights that the new trial constitutes a further violation of due process?

2. Did the Arizona Appeals Court, Division Two, in refusing to grant a stay of the new trial, as anticipated under its own rules, pending the outcome of this petition to the United States Supreme Court further violate due process of the parent by inhibiting her access to appeals allowed by law?

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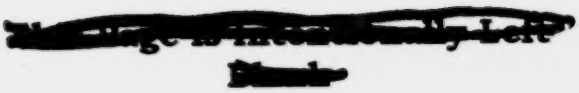


Reply to Brief in Opposition

Per United States Supreme Court Rule, 15.6, this is a reply to the new points made in the Brief in Opposition submitted in the instant case, 01-1595, on or about May 29, 2002.

Taken as a whole the Brief in Opposition relies on a number of facts, and in some cases interpretation of the record of the instant case that are generally speculative at best. While the Petitioner, Tammy McGovern, feels that each of these facts are individually disputable, at the same time disputing facts is not appropriate before this tribunal. Thus no space will be spent going individually over each alleged fact introduced in the Brief in Opposition and attempting to provide the Respondent's counter position.

However, taken as a body and individually, these alleged facts, even if they were true, fail in one other major respect. None are relevant to the questions raised in the Petition for Writ of Certiorari. The issue here is simple and based on the lack of any dispute of the central relevant facts. The lack of dispute of the central facts by the Petitioners suggests that they fail to dispute any relevant fact. These relevant facts are simple and all a matter of record as follows:

1. Tammy McGovern is a fit Mother. Both the trial court and the Arizona Appeals Court, as explained in the Petition for Writ of Certiorari affirm this fact. The Brief in Opposition does not dispute this conclusion of the court.

2. The Arizona Superior Court denied Tammy McGovern due process in conducting a bench trial. This lack of due process was confirmed by the trial judge and upheld by the Arizona Court of Appeals, Division Two (by failure to review likewise upheld by the Arizona Supreme Court).

3. The Mother endured a massive burden, The Mother endured four years of litigation, an unlawful *pende lite* visitation order, several months of an unlawful final visitation order (ultimately vacated by the trial court), and large legal bills with lingering debt. All this occurred while the Mother was working, supporting herself and her daughter, while simultaneously maintaining a full load as a nursing student in the University of Arizona. The Brief in Opposition attempts to argue that the Respondents, the aggressors in this action, did not have their wealth legally established. The financial status of the grandparents is irrelevant. There can be no doubt that litigation and unlawful visitation orders confiscating a large part of the Mother's precious quality time with her child was a burden for her both in financial and emotional terms. Whatever burden exists for the grandparents it was one they choose to assume. The Brief in Opposition attempts to likewise argue that litigation burden only becomes a burden when the litigation extends six years or more instead of the approximately four years of the instant case. Such an argument seems to be made without

any suggestion of a measure of what is or is not a burden. The Mother has no idea if her burden is heavier or lighter than that forced by the Washington Court system on Tommy Granville (Wynn) (see *Troxel v. Granville.* 530 U.S. 57, 120 S. Ct, 2054, 147 L. Ed. 2d 49 (2000)). She only knows it has been a very difficult time in her life with bills that are likely to go on as far as she can view into the future. Further her burden is not over but is to start over from the very beginning if she chooses to remain in her current community.

4. The Arizona Appeals Court, Division Two, gave no weight to the Mother's burden, while giving great, undue weight to the vague potential that somehow the grandparents if allowed more litigation may find some way to overcome her right to parent her child without interference from the state.

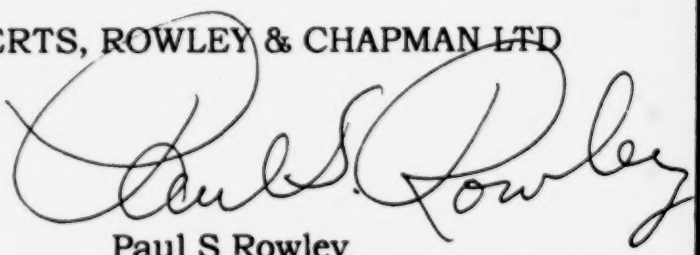
There is no dispute of these facts, and the immediate question it raises.

When does the burden of litigation become soo large that this burden outweighs any potential benefit to the state from further litigation? Without some constitutional limit to the ability for rich grandparents or other third parties to wage war by litigation, the constitutional protections extended by the fourteenth amendment become hollow at best. Is the standard the same for a fit parent as it is for some accused of a violent crime, that is litigation until every poten-

tial of a favorable outcome to the state or grandparents has been exhausted? None of the new facts alleged in the Brief in Opposition have any probative value to this question and in fact they tend to framework the issue. The issue is not whether the grandparents may possibly secure a different outcome afforded the opportunity of endless litigation but rather is the potential benefit to the state of this endless litigation outweigh the right for a fit parent to raise his or her child as she see's fit as guarenteed by the 14th Amendment.

RESPECTIVELY SUBMITTED this 12th day of June, 2002.

ROBERTS, ROWLEY & CHAPMAN LTD



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